Remarks

Claims 23-29 are pending in the application.

Claim 24 is allowed.

Claims 23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oberg et al. U.S. Patent No. 6,915,075 (hereinafter "Oberg") in view of Ghani U.S. 2002/0114036 (hereinafter "Ghani").

Claims 25-28 are objected to for various informalities.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Entry of this Amendment is proper under 37 CFR 1.116 since the amendment: (a) places the application in condition for allowance for the reasons discussed herein; (b) does not raise any new issue requiring further search and/or consideration since the amendments amplify issues previously discussed throughout prosecution; (c) satisfies a requirement of form asserted in the previous Office Action; (d) does not present any additional claims without canceling a corresponding number of finally rejected claims; or (e) places the application in better form for appeal, should an appeal be necessary. The amendment is necessary and was not earlier presented because it is made in response to arguments raised in the final rejection. Entry of the amendment is thus respectfully requested.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Allowable Claims

Applicants thank the Examiner for the allowance of claim 24.

Claims 25-28 have been amended to overcome the Examiner's cited claim objections (see below), and now properly depend - directly and indirectly - from claim 24. Since each dependent claim inherently includes each and every element of the claim from which they depend, claims 25-28 should commensurately be allowable for depending on claim 24.

Claim 29 is canceled to address the redundancy issues with respect to claim 23 cited by the Examiner.

Claim Objections

Claims 23 and 25-29 are objected to for various informalities which have been addressed. Specifically, claims 25-28 have been amended to properly depend - directly and indirectly - from claim 24.

Claim 29 is canceled to address the redundancy issues with claim 23 cited by the Examiner.

Therefore, the Applicants respectfully submit that the objection to claims 23 and 25-28 should be withdrawn.

Rejection Under 35 U.S.C. 103

Independent claims 23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oberg in view of Ghani. Claim 29, as mentioned above, has been canceled. The rejection of claim 23 is respectfully traversed because Oberg and Ghani, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

For example, neither Oberg or Ghani teaches or suggests at least the claim element "routing the at least two optical carriers, wherein when the **first carrier** is not capable of transmitting first information over the fiber, the first information is modulated on the **second carrier** for transmission over the fiber." The Office Action suggests this limitation is taught by Oberg col. 5 line 50 to col. 6, line 47, via routing the optical carriers by switches 17, 19. The Applicants respectfully disagree.

Claim 23 positively associates the *first carrier* with "having a **first** wavelength" and the *second carrier* with "having a **second** wavelength." Thus, when the claimed "second carrier" is transmitted over the fiber "when the first carrier is not capable of transmitting first information over the fiber," it is done by way of a carrier having a **different** wavelength. In contrast, Oberg clearly states "the output signal of the standby transmitter 7'...transmits the **same signal** as the ordinary transmitter 7" (col. 5, lines 63-65). In other words, the *wavelength* transmitted by standby transmitter 7' is the same as the wavelength transmitted by ordinary transmitter 7.

Moreover, when the signal of standby transmitter 7' is utilized (i.e. when access transmitter 7 becomes defective), it is "directed to the same transponder 11..." (col. 5, line 67) as the signal of ordinary transmitter 7 during normal operation. As with transmitter 7 and standby transmitter 7', the output wavelength of transponder 11 also never changes. This is clearly explained by Oberg "every transponder 11, 21 will thus transmit its own specific wavelength" (col. 5, lines 2-3). Therefore, Oberg clearly does not teach or suggest the claimed "routing the at least two optical carriers, wherein when the **first carrier** is not capable of transmitting first information over the fiber, the first information is modulated on the **second carrier** for transmission over the fiber," as recited in Applicants' claim 23.

According to MPEP §2143, to establish a prima facie case of obviousness under §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The Office Action failed to establish a *prima facie* case of obviousness, for at least the reason of Oberg or Ghani failing to teach or suggest all the claim elements. Thus, independent claim 23 is allowable over the proposed combination of Oberg and Ghani under 35 U.S.C. 103.

Therefore, the Applicants respectfully request the Examiner to withdraw the rejection.

Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, he is invited to call applicants' attorney so that arrangements may be made to discuss and resolve any such issues.

Respectfully,
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2/13/05

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